

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

KONINKLIJKE PHILIPS N.V. and
PHILIPS LIGHTING NORTH AMERICA
CORPORATION,

Plaintiffs,

v.

WANGS ALLIANCE CORPORATION
d/b/a WAC LIGHTING CO.,

Defendant.

CIVIL ACTION NO. 1:14-cv-12298-GAO

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY
BRIEF IN SUPPORT OF ITS CLAIM CONSTRUCTION POSITIONS**

Plaintiffs Koninklijke Philips N.V. and Philips Lighting North America Corporation (collectively “Philips”) respectfully move for leave to file a sur-reply claim construction brief. Plaintiffs proposed sur-reply is attached as Exhibit A to this motion.

This sur-reply is necessary to address new arguments that could and should have been raised by Defendant Wangs Alliance Corporation d/b/a WAC Lighting Co.’s (“WAC”) in its opening brief, but rather were presented for the first time by WAC in its Responsive Claim Construction Brief (Dkt. No. 52) and in the associated Declaration of David A. Smith, Ph.D., in Support of Defendants WAC Lighting Co.’s Responsive Claim Construction Brief (Dkt. No. 53). This sur-reply brief is also necessary to address a new claim construction proposal espoused by Dr. Smith but never previously proposed or urged by WAC.

Pursuant to the Schedule adopted by the Court in this action (Dkt. No. 20, 23), the parties simultaneously exchanged claim terms to be construed and proposed constructions for those terms in preliminary form on January 22, 2015, and in final form on February 5, 2015. Thereafter, pursuant to the Schedule adopted by the Court (*id.*), the parties simultaneously

exchanged opening claim construction briefs on February 20, 2015, and reply briefs on March 13, 2015.

Despite Philips' disclosure of its proposed constructions prior to briefing, however, WAC's opening claim construction brief did not address or even acknowledge Philips' proposed constructions. Furthermore, WAC's opening claim construction brief did not offer any expert testimony to support its own proposed constructions or respond to Philips' proposed constructions. *See* Dkt. No. 40. Rather, WAC waited to first address Philips' proposed constructions in its reply brief. Likewise, WAC waited to first rely on expert testimony in support of its own proposed constructions and in response to Philips' proposed constructions in an expert declaration filed simultaneously with its reply claim construction brief. *See* Dkt. 53. These tactics have deprived Philips of a fair opportunity to brief and respond to WAC's newly raised assertions regarding Philips' proposed constructions or to respond to the expert testimony belatedly offered by WAC.

Therefore, Plaintiffs respectfully move the Court for leave to file the attached proposed sur-reply.¹ The attached sur-reply addresses arguments made for the first time in WAC's claim construction reply brief and in the expert declaration that WAC filed therewith.

¹ In the parties' Joint Claim Construction and Prehearing Statement (Dkt. No. 60), the parties agreed that the claim construction hearing could take a full day. If the Court grants this request for leave to file a sur-reply, Philips believes the claim construction hearing could be completed in less than a full day.

Dated: April 13, 2015

Respectfully submitted,

/s/ Denise W. DeFranco

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LOCAL RULE 7.1 CERTIFICATION

Counsel for Plaintiffs hereby certify under Local Rule 7.1 that a member of her law firm conferred with counsel for Defendant, and Defendant opposes the filing of this motion.

/s/ Denise W. DeFranco
Denise W. DeFranco (BBO No. 558859)

CERTIFICATE OF SERVICE

I certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as nonregistered participants on April 13, 2015.

/s/ Denise W. DeFranco
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